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UNREPORTED DEFERRALS OF BUDGET AUTHORITY

COMMUNICATION

FROM

THE ACTING COMPTROLLER GENERAL OF THE UNITED STATES

TRANSMITTING

NOTIFICATION OF TWO DEFERRALS OF BUDGET AUTHORITY THAT HAVE NOT BEEN REPORTED BY THE PRESIDENT, PURSUANT TO 2 U.S.C. 686(a)

JUNE 16, 1986.—Referred to the Committee on Appropriations and ordered to be printed

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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June 12, 1986

The Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives

Dear Mr. Speaker:

This letter reports deferrals of budget authority appropriated to the Forest Service, Department of Agriculture, and the Bureau of Land Management (BLM), Department of the Interior, which the President has not reported to the Congress.

Section 1015(a) of the Impoundment Control Act (the Act), 2 U.S.C. § 686(a), requires the Comptroller General to report to the Congress whenever he finds that any officer or employee of the United States has ordered, permitted or approved the deferral of budget authority, and the President has failed to transmit a special message with respect to such deferral. The United States District Court for the District of Columbia recently held unconstitutional the President's authority under the Act to defer budget authority. New Haven v. United States, No. 86-0455, slip op. (D.D.C. May 16, 1986). The court's decision, however, was stayed pending appeal. The Department of Justice reportedly intends to appeal.

Officials of the Office of Management and Budget have advised us that, at least until appellate proceedings in New Haven are completed, they will continue to report deferrals pursuant to the Act. We also will continue to carry out our functions under the Act during this period, including reporting, under section 1015, otherwise unreported impoundments. Accordingly, this is to advise that the President is deferring $9,788,000 of budget authority in the Forest Service account, "Forest Service Permanent Appropriations," and $3,400,000 of budget authority in the BLM account, "BLM Miscellaneous Permanent Appropriations," and has not reported these withholdings.

These two accounts are special fund accounts. Various statutes require that a portion of the receipts from federally-owned lands be returned, annually or semi-annually, to the jurisdictions in which the lands are located. The receipts, when collected, are credited to these special fund accounts; annual or semi-annual payments, based on receipts collected during the fiscal year, are later made from these accounts.

The Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177, resulted in the sequestration of $9,788,000 from the Forest Service account, and $3,400,000 from the BLM account. We found that the Office of Management and Budget (OMB) improperly applied the required sequester to receipts collected in fiscal year 1985, rather than to receipts to be collected in fiscal year 1986. See B-221498.18, May 5, 1986 (enclosed). This resulted in corresponding reductions in the amounts of payments made to states and counties based on fiscal year 1985 receipts.

Under section 256(a)(2) of Public Law 99-177, funds sequestered in a special fund remain in the fund and are available in accordance with and to the extent permitted by law. OMB interprets section 256(a)(2) as automatically restoring the sequestered funds at issue on October 1, 1986. OMB states that the sequestered payments are, in effect, deferred until then.

Because the funds are improperly sequestered, we agree that they are in effect deferred. In the case of an authorized sequestration, no question would arise of reporting such a deferral, because sequestration is not subject to the Impoundment Control Act. Pub. L. No. 99-177, § 252(a)(1). That exemption from the Act is not applicable here, because, as we informed OMB on May 5, 1986, these withholdings are not authorized under Public Law 99-177. B-221498.18, May 5, 1986. OMB has not reported the deferrals to the Congress. Consequently, we now advise that these withholdings are unreported deferrals, subject to the procedures under the Act.

Milton J. Socolar

Acting Comptroller General
of the United States

Enclosure

ENCLOSURE

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-221498.18 May 5, 1986

The Honorable Mark O. Hatfield
Chairman, Committee on Appropriations
United States Senate

Dear Mr. Chairman:

This responds to your letter of February 26, 1986, co-signed by the Honorable James A. McClure, regarding the President's sequestration, under the Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), of funds from two permanent appropriations accounts of the Forest Service and the Bureau of Land Management (BLM). You request our views as to the Act's applicability to balances of these accounts obligated prior to the statute's enactment. You have also asked that we provide an appraisal of the manner in which the agencies involved plan to apportion reductions among the unobligated portions of these two accounts.

In the present case, the Office of Management and Budget (OMB) has determined that many of the budget account activities in each of the two accounts have been obligated, and has increased the percentage reduction required for unobligated activities within each account. As discussed in more detail below, we agree with OMB's conclusion that the application of Public Law 99-177 may result in disproportionate reductions in accounts in which substantial funds have been obligated. We differ, however, with OMB's opinion that fiscal year 1986 budgetary resources in these two accounts have been obligated to the extent that disproportionate reductions are necessary. OMB's position is based on its view that the sequestrable base for fiscal year 1986 for these accounts consists of budgetary resources paid out in fiscal year 1986. Our view is that the budgetary resources subject to sequestration in fiscal year 1986 are those that are derived from receipts collected in fiscal year 1986, even though actual payments from such receipts may not be made until after the end of the fiscal year. Fiscal year 1986 receipts have not yet been paid out in full, and may be sequestered at a proportional rate.

BACKGROUND

The two accounts at issue here are entitled "Forest Service Permanent Appropriations," and "BLM Miscellaneous Permanent Appropriations." Both accounts, and the various budget account activities of which they are comprised, are described in more detail in the attachment. They are special fund accounts, from which payments are made annually or semi-annually to states and counties. Payments out of the accounts are based on various statutory provisions requiring that a portion of the receipts from federally-owned lands be returned annually (or in some cases semi-annually) to the jurisdictions in which they are located. The applicable statutory language frequently requires payments to be made at the close of a fiscal year, based on receipts collected during that fiscal year. Due to the practicalities involved, however, most of the payments in question are made at the beginning of a fiscal year, based on receipts collected during the previous fiscal year.

The January 15, 1986, report of the Directors of OMB and the Congressional Budget Office (CBO) identified the Forest Service account in question as having $227,618,000 in sequestrable budgetary resources for fiscal year 1986. The report identified the BLM account as having $79,069,000 in sequestrable budgetary resources. We understand from our discussions with officials from OMB and CBO that these amounts were calculated on the basis of estimates of the amount of receipts collected during fiscal year 1985 that would be paid to states and counties in fiscal year 1986 under applicable statutory authority. The report specified fiscal year 1986 sequester amounts of $9,788,000 and $3,400,000, respectively. Our January 21, 1986, report did not object to these sequester amounts for these two accounts.

In applying the required sequester below the account level, OMB and the agencies involved found that, for a number of individual budget account activities, the full amount authorized to be paid from fiscal year 1985 receipts had been paid out in the early part of fiscal year 1986 (and in one case in the last part of fiscal year 1985). According to OMB, this left no unobligated balances available for reduction within those specific activities. Consequently, OMB determined that the fiscal year 1986 sequester for the two accounts should be made against those budget account activities for which payments from fiscal year 1985 receipts had not yet been made, in order to ensure that the full amount of the sequester required by Public Law 99-177 would be made in each account. In many cases this resulted in reductions of almost 70 percent of the amount

otherwise due the states and counties under the programs involved.1/

ANALYSIS

As a preliminary matter, we concur with OMB's view that the unobligated portions of an account may be sequestered at a higher percentage rate where large amounts of budgetary resources in the account have been obligated.2/ Consequently, the principal scope of our inquiry in the present case has been to determine which budgetary resources of these two accounts are subject to the fiscal year 1986 sequestration process, and the extent to which those resources have been obligated. As explained below, we disagree with OMB's treatment of payments made in fiscal year 1986 as budgetary resources of that year. In our view, fiscal year 1986 budgetary resources subject to sequester are those derived from receipts collected in fiscal year 1986.

For non-defense accounts, Public Law 99-177 requires the sequestration of "new budget authority, new loan guarantee

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1/ OMB officials, while acknowledging that this results in an unfair distribution of reductions among individual programs and activities, have suggested that any injury is temporary, as sequestered funds will be automatically restored as of October 1, 1986. This conclusion is based on section 256(a)(2) of the Act, which states that funds sequestered in special or trust funds shall remain in such funds and be available in accordance with and to the extent permitted by law, including the provisions of Public Law 99-177. Under this interpretation of section 256(a)(2), the sequestration process would effectively result in a deferral of a portion of the payments from such funds until after the end of the fiscal year involved.

2/ Although section 256(l) of the Act provides that obligated balances are not subject to reduction, we consider that language to govern the implementation of required reductions, rather than the calculation of the amount required to be reduced within each account. The language of section 256(l) must be read in light of the overall statutory scheme of Public Law 99-177, which takes obligated fiscal year 1986 budgetary resources into account by prorating the amount of required reductions by seven-twelfths. See § 251(a)(3)(A)(ii)(I). Exclusion of obligated balances from the sequestrable base in determining the proper amount of sequester in each account would, in effect, count those obligations twice.

commitments, new direct loan obligations, obligation limitations, and spending authority." § 251(a)(3)(F)(iv)(I). Regardless of which of these categories of budgetary resources a particular account involves, it is apparent that only fiscal year 1986 resources are included within the sequestrable base of non-defense accounts. In contrast, sequestration of resources in defense accounts specifically covers unobligated balances of budgetary resources provided in prior years. See § 251(d)(1).

Because of the way that Public Law 99-177 treats non-defense accounts, it is important to determine which funds are attributable to fiscal year 1986 (and therefore included in the sequestrable base) and which are attributable to prior fiscal years. This applies both to obligated and unobligated funds.

OMB's practice in special fund accounts such as those involved in the present case is to recognize the authority to make payments as new budgetary resources of the fiscal year in which payments are actually made, rather than of the fiscal year when funds are collected and made available for payment. Funds are apportioned on this basis as well. Consistent with this approach, OMB and CBO's calculation of the sequestrable base for these accounts for fiscal year 1986 included the anticipated amount of fiscal year 1985 collections to be paid out during fiscal year 1986, rather than the amount of budgetary resources that may be estimated to arise from receipts collected during fiscal year 1986. This practice is also the basis for OMB's conclusion in the present case that the payment of funds in early fiscal year 1986 resulted in obligated balances of 1986 budgetary resources in the budget account activities involved, thus requiring that other budget account activities within the same account make up the amount of any sequestration thereby foregone.

In our opinion, however, the better view is that the budgetary resources in question should be attributable to the fiscal year in which receipts are collected, rather than to the fiscal year in which payments are actually made. Permanent indefinite appropriations such as those at issue here are contingent upon factors independent of the actions of agency officials responsible for determining when payments should be made. The resources in question here arise as of the time receipts are collected, regardless of the timing of outlays. In fact, there is considerable discretion on the part of agency officials as to whether to make payments at the end of one fiscal year or at the beginning of the next.

Thus, we do not concur with OMB's treatment of payments to States of monies collected on National Forest lands. In our view, the authority provided by the permanent indefinite appropriation set out in 16 U.S.C. § 500 arises during a fiscal year as receipts are collected, even though actual payments may not be made until the beginning of the following fiscal year. Thus, unlike OMB, we would not consider payments made in October and December 1985 under the program to be obligated balances of fiscal year 1986 budgetary resources. Budgetary resources sequestrable in fiscal year 1986 are those that arise from fiscal year 1986 collections, even though the resulting payments may not be made until October 1986.

Similarly, it is our view that October and December 1985 payments to the State of Minnesota for lands in the Superior National Forest were based on fiscal year 1985 budgetary resources. The fiscal year 1986 authority, subject to a 4.3 percent sequester, will not result in outlays until (or after) the end of the current fiscal year.

We consider the situation to be the same for the budget account activities of the BLM account described in the attachment. In each case in which payments were made in the early part of fiscal year 1986, those payments were based on budgetary resources arising from receipts collected in fiscal year 1985. Indeed, in the largest such activity, almost all of the payments in question were actually made before the close of fiscal year 1985; it would not be correct, in our opinion, to consider such payments as obligated fiscal year 1986 balances.

Fiscal year 1986 receipts are still being collected in each of the budget account activities within these two accounts, and the payments required to be made from such receipts have yet to be distributed. Using our analysis, sufficient fiscal year 1986 budgetary resources exist in all budget account activities involved to accommodate a 4.3 percent sequester.

CONCLUSION

In summary, we do not agree with OMB's view that funds paid from receipts collected in fiscal year 1985 should be considered part of the sequestrable base for fiscal year 1986. In our opinion, payments made from fiscal year 1985 receipts should be considered outlays of fiscal year 1985 authority. The fiscal year 1986 sequestrable base instead consists of budgetary resources derived from receipts collected in fiscal year 1986, regardless of when payments are actually made.

B-221498.18

With regard to remedial actions, we are informing OMB of our views, and requesting that it reexamine the treatment given to these two accounts. If no further action is taken to release funds sequestered from fiscal year 1985 budgetary resources, we plan to issue a report to the Congress under section 1015(a) of the Impoundment Control Act of 1974 (2 U.S.C. § 686(a)).

We hope that the foregoing is of assistance to you.

Sincerely yours,

Milton J. Socolar

for Comptroller General
of the United States

Attachment

ATTACHMENT

Description of Budget Account Activities

Forest Service Permanent Appropriations. This account (budget appendix account number 12-9921) is comprised of three budget account activities involving payments to states and localities under permanent indefinite appropriations.

The largest of the three programs involves payments to states of 25 percent of the monies received on National Forest lands, as authorized by 16 U.S.C. § 500. That statutory authority requires payments to be made from the National Forest Fund at the end of each fiscal year from receipts collected during that fiscal year. We understand that, in actual practice, payments are usually made on the first day of the fiscal year following the year in which receipts are collected, with adjustment payments made several months later. Thus, payments to the states of National Forest receipts collected during fiscal year 1985 were made on October 1, 1985 (in a total amount of almost $154 million), with later adjustment payments made on December 2, 1985 (totalling an additional $59 million).

The second largest program involves payments to counties in which National Grasslands and Land Utilization Projects under Forest Service jurisdiction are located of 25 percent of the net revenues received from those lands. These payments are made under authority of 7 U.S.C. § 1012, which provides for such payments to be made for receipts collected for each calendar year as soon as practicable after the end of that calender year. We have been informed by Department of Agriculture officials that payments under this program for a calendar year are usually made in March of the subsequent calendar year. We understand that the fiscal year 1986 payments, which cover receipts collected during calendar year 1985, have not yet been made. The amounts collected during calendar year 1985 totalled almost $16 million.

The third program under this account involves an annual payment made to the State of Minnesota for lands in the Boundary Waters Canoe Area. The amount of the payment is three quarters of one percent of the appraised value of certain National Forest lands in Cook, Lake, and St. Louis counties, as required by 16 U.S.C. § 577(g). The statutory authority requires the payment to be made "at the close of each fiscal year." The fiscal year 1985 payment, amounting to $537,011 was made on October 1, 1985, with a final adjustment of an additional $179,004 made on December 2, 1985.

BLM Miscellaneous Permanent Appropriations (Other General Purpose Fiscal Assistance). According to the Department of the Interior's program, project, and activity sequestration report for fiscal year 1986, this account (budget appendix account number 14-9921) consists of nine budget account activities.1/

The largest program under this account involves annual payments of 50 percent of the receipts of Oregon and California grant land funds to the counties in which the lands are situated. The funding authorization states that payments are to be made each year, proportional to the total assessed value of grant lands in a given county in that year. 43 U.S.C. § 1181f(a). Payments totalling approximately $51 million (out of fiscal year 1985 receipts) were made on September 30, 1985, with adjustment payments of another $10 million made on November 4, 1985.2/

Three of the budget account activities listed for this account involve payments to states of a percentage of grazing receipts from public lands within a given state, under the Taylor Grazing Act (43 U.S.C. §§ 315-316o). The Act provides

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1/The appendix to the President's budget for fiscal year 1986 lists 12 budget account activities for the BLM Miscellaneous Permanent Appropriations account. One of these activities, "expenses, road maintenance deposits," was treated as a separate miscellaneous permanent appropriations account in the joint OMB/CBO report (unchanged by GAO), and received a full 4.3 percent sequester. Another account activity, "leasing of grazing lands," was apparently omitted because no payments were anticipated for fiscal year 1986. A third, "payments to Oklahoma, royalties," appears to have been inadvertently omitted. The latter account activity consists of a relatively small payment ($17,000 was paid in December, 1985).

2/ Although, in the case of this budget account activity, the majority of payments from fiscal year 1985 receipts were made before the end of the fiscal year, OMB and BLM apparently consider such payments to represent expenditures of fiscal year 1986 budgetary resources, for purposes of applying the 4.3 percent sequester required for fiscal year 1986. According to BLM officials, funds of this activity are considered obligated for fiscal year 1986, and the sequester otherwise required will be made up by sequestering other budget account activities at higher rates for fiscal year 1986. As discussed elsewhere, we do not agree that payments in September and November 1985 constituted outlays of fiscal year 1986 budgetary resources.

that payments are to be made "at the end" of each fiscal year from receipts collected during that fiscal year. See, e.g., 43 U.S.C. § 315i. Payments from receipts collected during fiscal year 1985 (amounting to approximately $2.5 million for all three activities) were made on December 2 and 5, 1985.

Another budget account activity involves payments to Coos and Douglas counties, Oregon, from receipts from the Coos Bay Wagon Road grant lands. The applicable statute provides that a percentage of the receipts derived in any one year from the grant lands "shall be paid annually" in lieu of taxes. 43 U.S.C. § 1181f-1. According to BLM, of approximately $580,000 collected in fiscal year 1986 for payment to the counties, some $84,000 was paid as of January 31, 1986.

Also included in this account is a budget account activity for "payments to states (proceeds of sales)." According to BLM, the States are paid five percent of the net proceeds from the sale of public land and public land products.3/ Agency officials have informed us that payments to states from fiscal year 1985 receipts were made in December 1985.

Another program involves payments to Nevada, and counties in Nevada, of certain percentages of revenues from sales of public lands in the Lake Tahoe Basin. The statute authorizing this payment provides that specified portions of "annual revenues [from sales] shall be returned annually." Pub. L. No. 96-586, § 2(d), 94 Stat. 3381-2 (1980). According to BLM, payments for revenues collected during fiscal year 1985 have apparently not yet been made.

Yet another budget account activity involves semi-annual payments to Alaska of receipts resulting from oil and gas leases in the National Petroleum Reserve in Alaska. The statutory authorization provides that 50 percent of receipts collected shall be paid by the Secretary of the Treasury as soon as practicable after March 30 and September 30 of each year. See 42 U.S.C. § 6508. According to BLM, a payment of $1.3 million, covering receipts from the last half of fiscal year 1985, was made on December 12, 1985. The payment for receipts collected during the first half of fiscal year 1986 has not yet been made.

3/The cited authority for such payments, 31 U.S.C. § 1305, no longer includes a permanent appropriation for this account, as the appropriations account "five percent funds to states" was repealed by former section 725c(a) and (b)34 of title 31. See 31 U.S.C. § 1305 note.

Finally, this account, like the Forest Service Miscellaneous Permanent Appropriations account described above, includes a budget account activity for payments to counties from revenues received from National Grasslands, where those grasslands are under BLM jurisdiction. Like the Department of Agriculture program, the BLM program is also authorized by 7 U.S.C. § 1012, and involves payments during a fiscal year for a percentage of receipts collected the previous calendar year. As with the Department of Agriculture program, payments for calendar year 1985, have not yet been made.

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